



Practitioner's Docket No. 3780.002

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Dennis J. Klein

Application No.: 10/760,336

Group No.: 1742

Filed: 01/20/2004

Examiner: Harry D. Wilkins III

For: APPARATUS AND METHOD FOR THE CONVERSION OF WATER INTO A NEW GASEOUS AND COMBUSTIBLE FORM AND THE COMBUSTIBLE GAS FORMED THEREBY

Mail Stop Amendment

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

RESTRICTION REQUIREMENT RESPONSE TRANSMITTAL
AND
REQUEST FOR TELEPHONIC INTERVIEW

1. Transmitted herewith is a restriction requirement response for this application.

STATUS

2. Applicant is a small entity. A statement was already filed.

EXTENSION OF TERM

CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10*

(When using Express Mail, the Express Mail label number is *mandatory*;
Express Mail certification is optional.)

I hereby certify that, on the date shown below, this correspondence is being:

MAILING

deposited with the United States Postal Service in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

37 C.F.R. § 1.8(a)

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37 C.F.R. § 1.10*

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TRANSMISSION

facsimile transmitted to the Patent and Trademark Office, (703) _____ - _____.

Stephen L. Crist
Signature

Date: 11/5/04

Stephen Crist
(type or print name of person certifying)

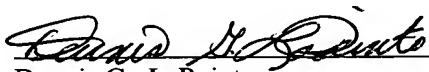
* Only the date of filing (' 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under ' 1.8 continues to be taken into account in determining timeliness. See ' 1.703(f). Consider "Express Mail Post Office to Addressee" (' 1.10) or facsimile transmission (' 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

3. The proceedings herein are for a patent application and the provisions of 37 C.F.R. 1.136 apply. Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition for extension of time.
4. No additional fee for claims is required.

FEE DEFICIENCY

5. If an additional extension and/or fee is required, charge Account No. 13-1992.

Date: 11/4/04


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11-8-04

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PATENTS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Dennis J. Klein)	
)	
S.N.: 10/760,336)	Examiner: Harry D. Wilkins III
)	
Filed: January 20, 2004)	Art Unit: 1742
)	
For: APPARATUS AND METHOD FOR THE)	
CONVERSION OF WATER INTO A)	
NEW GASEOUS AND COMBUSTIBLE)	
FORM AND THE COMBUSTIBLE GAS)	
FORMED THEREBY)	
_____)	

Certificate of Express Mail Under 37 C.F.R. 1.10

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Stephen L. Crist
Stephen Crist, Legal Assistant

Box Non-Fee Amendment
Commissioner for Patents

RESPONSE
and
REQUEST FOR TELEPHONIC INTERVIEW

Dear Sir:

The Office Action Summary, mailed October 8, 2004, having a shortened statutory period for response set to expire November 8, 2004, requires restriction to one of the following alleged patentably distinct inventions under 35 U.S.C. §121:

- I. Claims 1-8 and 21-28, drawn to an electrolyzer, classified in class 204, subclass 252.

- II. Claims 9-11, drawn to a "bond", classified in class 585, subclass 1+.
- III. Claims 12-20, drawn to a combustible gas, classified in class 44, subclass 628.
- IV. Claims 29-50, drawn to a method of electrolyzing, classified in class 205, subclass 742+.

Applicant traverses the requirement for the reasons stated hereinafter and respectfully requests withdrawal of the restriction requirement.

**Nevertheless, in accordance with the election requirement, Applicant elects Group I:
Claims 1-8 and 21-28, drawn to an electrolyzer, classified in class 204, subclass 252.**

Applicant acknowledges the Examiner's determination made requiring the restriction without further elaboration or explanation. Applicant respectfully disagrees with the Examiner.

Clearly, there is a very close relationship between the Groups I and IV inventions.

The Examiner states that the apparatus can be used to make chlorine gas from the electrolysis of sea water. Applicant reminds the Examiner that the claims refer to "water"; but nevertheless, if chlorine gas were to be produced, it would be miniscule in comparison to the clean burning combustible gas produced in the present invention. Applicant believes that even if sea water was used, in the electrolyzer as configured and claimed, chlorine gas would not be produced, and if so, an insignificant amount would be produced. Unless, the Examiner can explain how chlorine gas is produced instead of a clean burning combustible gas, Applicant respectfully requests that Groups I and IV be combined.

In view of Applicant's lack of understanding as to the basis of the Examiner's comment and conclusion, Applicant respectfully request that the Examiner grant a telephone interview (date and time to be arranged between the undersigned and the Examiner). Attached is form PTOL-413A.

As the Examiner is aware, Section 121 requires the Examiner to find that the inventions be independent and distinct. Also see, Torok v. Watson, Com'r Pats., 122 F. Supp. 788, 103 U.S.P.Q. 78

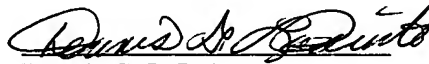
(DC 1954). The Examiner has not provided any reasons to support his finding. To support a conclusion to require restriction, an Examiner must provide supporting reasons and/or examples. M.P.E.P. § 803. Non-elected Group IV claims are clearly closely related to the elected Group I claims. Consequently, they should be joined and the requirement for restriction should be withdrawn, as it applies to these two groups.

In addition, the statutory basis of restriction practice under Section 121, provides that if two or more independent and distinct inventions are claimed in one patent application, the Examiner may require the application be restricted to one invention. This authority is discretionary, not mandatory. Accordingly, Applicant respectfully requests that such discretionary authority not be invoked and the restriction requirement be withdrawn.

Applicant also elects with the understanding that should future divisional applications be filed to prosecute the non-elected species and any remaining claims, Applicant will not be presented with a double-patenting rejection for the claims readable on the non-elected species.

Very respectfully,

Dated: 11/4/04


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